

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

PAMELA L. SHEPARD,)
Plaintiff)
v.)
BJ'S WHOLESALE CLUB HOLDINGS, INC.,) CA No.:
and COLE BJ PORTFOLIO II, LLC,)
Defendants)

)

NOTICE OF REMOVAL OF DEFENDANTS
BJ'S WHOLESALE CLUB HOLDINGS, INC. AND COLE BJ PORTFOLIO II, LLC

TO THE JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE:

The petition of the defendants, BJ's Wholesale Club Holdings, Inc. and Cole BJ Portfolio II, LLC ("BJ's") for removal of this action from the Maine Superior Court, Androscoggin County, to the United States District Court for the District of Maine respectfully shows:

FIRST: That the petitioners herein are defendants in a civil action brought against it in the Maine Superior Court, Androscoggin County Superior Court, entitled "Pamela L. Shepard v. BJ's Wholesale Club Holdings, LLC and Cole BJ Portfolio II, LLC" (the "State Court Action") See Complaint and Return of Service, attached hereto as **Exhibits A and B**. Said action was filed on or about February 23, 2024 and bears Case Number: ANDSC-CIV-2024-00031. Id.

SECOND: That the undersigned counsel accepted service of the aforesaid action on behalf of BJ's on or about February 29, 2024.

THIRD: BJ's hereby reserves the right to assert any and all defenses and counterclaims.

BJ's further reserves the right to amend or supplement this Notice of Removal.

STATUTORY REQUIREMENTS – 28 U.S.C. §§ 1332, 1441, and 1446

FOURTH: This petition is timely filed, pursuant to 28 U.S.C. § 1446, which states, “The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.” See 28 U.S.C. § 1446 (b)(1).

The State Court Action is removable based on diversity jurisdiction as the pre-suit demand exceeded the sum or value of \$75,000, exclusive of interest and costs. This Notice of Removal has been filed by March 30, 2024—within 30 days of February 29, 2024, given that March 30 falls on a weekend. See 28 U.S.C. § 1446 (a). Accordingly, the Notice of Removal is timely.

FIFTH: That as set forth in the State Court Action, the plaintiff, an individual, is a resident of the town of Lewiston, Androscoggin County, State of Maine. See Exhibit B at ¶ 1.

SIXTH: The defendant, BJ's Wholesale Club Holdings, Inc., is a foreign incorporation with a principal place of business in the town of Marlborough, County of Middlesex, State of Massachusetts and does business in the town of Auburn, County of Androscoggin, State of Maine. Id. at ¶ 2.

SEVENTH: The defendant, Cole BJ Portfolio II, LLC, is a foreign limited liability company with a principal place of business in the town of Wilmington, County of New Castle, State of Delaware and does business in the town of Auburn, County of Androscoggin, State of

Maine. Id. at ¶ 3.

EIGHTH: That, by reason of the above, the above-captioned action is a civil action brought in a state court of which the United States District Courts have jurisdiction under the provisions of Title 28, U.S.C. § 1332 and is one which may be removed to this Court.

NINTH: There is diversity of citizenship under 28 U.S.C. § 1332 (a), where the plaintiff is a resident of Maine and BJ's is a resident of Massachusetts and Cole BJ Portfolio is a limited liability corporation with a principal office in Delaware and no members residing in Maine. Accordingly, the defendants are not citizens of Maine, the jurisdiction in which the State Court Action has been filed. As a result, because the defendants are not citizens of Maine they may properly remove the State Court Action on the basis of diversity jurisdiction. See 28 U.S.C. § 1332(a).

TENTH: As noted above, the amount in controversy is likely to exceed \$75,000.00, where the plaintiffs have alleged that the amount in controversy is in excess of \$75,000.00, exclusive of interest and cost.

PROCEDURAL REQUIREMENTS AND LOCAL RULES

ELEVENTH: This Court is part of the “district and division” embracing the place where the State Court Action was filed— Androscoggin County Superior Court. See 28 U.S.C. §§ 1441(a), 1446(a).

TWELFTH: BJ's and Cole BJ Portfolio II jointly petition for this removal. As they are the only named defendants consent from another defendant for the purpose of removing the State Court Action is not required. See 28 U.S.C. § 1446(b)(2)(A).

THRITEENTH: Attached as Exhibits A-D is a copy of all process, pleadings, and orders received by the defendants in the State Court Action. See 28 U.S.C. § 1446(a). Certified or

attested copies of all records, proceedings, and docket entries in the State Court Action will be filed within fourteen (14) days of the filing of this Notice of Removal. The appropriate filing fee has been paid to the Clerk of Court upon the filing of this Notice of Removal.

FOURTEENTH: The defendants have filed an Answer to the Plaintiff's Complaint on March 19, 2024.

FIFTEENTH: Pursuant to Federal Rule 7.1(a)(2)(A), a corporate disclosure statement is attached hereto as Exhibit G.

SIXTEENTH: A Notice of Removal and a Notice of Removal to Adverse Parties, pursuant to 28 U.S.C. § 1446(d), a copy of which is attached hereto as Exhibits E and F with exhibits omitted, will promptly be served upon all parties and filed with the Clerk of the Androscoggin County Superior Court.

SEVENTEENTH: This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11. See 28 U.S.C. § 1446(a).

CONCLUSION

Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, and the State Court Action may be removed.

WHEREFORE, BJ's and Cole BJ Portfolio pray that this cause proceed in this Court as an action properly removed thereto.

Respectfully Submitted,

The Defendants,
BJ'S WHOLESALE CLUB HOLDINGS, INC.
and COLE BJ PORTFOLIO II, LLC,
By their Attorneys,

Date: 04.01.24

/s/ Joseph P. Mendes

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CERTIFICATE OF SERVICE

I, Joseph P. Mendes/Michael P. Johnson, do hereby certify that pursuant to Federal Court Rules, I have this day served a true copy of the foregoing document via email to all parties and counsel of record:

Counsel for Plaintiff

Peter Clifford, Esq.
Clifford & Clifford, LLC
10 Moulton St., 5th Floor
Portland, ME 04101

Date: 04.01.24

/s/ Joseph P. Mendes

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